

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LAURA A. CARLSON, et al.,

Plaintiff(s),

vs.

JAMES BENEDETTI, et al.,

Defendant(s).

3:10-CV-0018-ECR (VPC)

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Edward C. Reed, Jr., United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4.

Before the court is defendants James Benedetti, Adam Watson, James Baca, Dwight Neven, Isidro Baca, Cole Morrow, Anthony Scillia, Jeffrey Patterson, Theodore D'Amico, and Robert Bannister's motion for partial judgment on the pleadings (#48). In their motion, defendants seek to have plaintiffs' state tort medical negligence claim asserted in the Sixth Claim for Relief dismissed because plaintiffs failed to attach an affidavit of a medical expert as required under Nevada law. *Id.* Failure to attach a medical affidavit of merit to an action asserting a claim of medical negligence requires dismissal pursuant to NRS 41A.071. Plaintiffs filed a notice of non-opposition to the motion for partial judgment on the pleadings (#49) and concede that the Sixth Claim for Relief should be dismissed. Therefore,

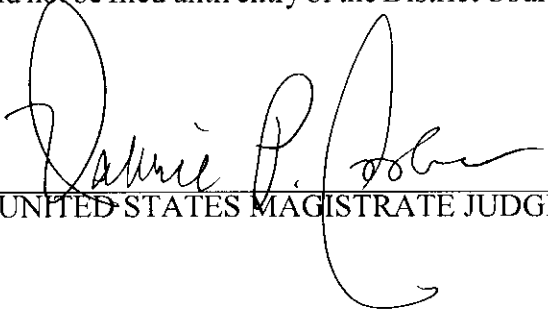
IT IS HEREBY RECOMMENDED that the District Court enter an order **GRANTING** defendants' motion for partial judgment on the pleadings (#48) and **ENTER** judgment in favor of the above-named defendants as to plaintiffs' Sixth Claim for Relief.

1 The parties should be aware of the following:

2 1. They may file, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules
3 of Practice, specific written objections to this Report and Recommendation within fourteen (14) days
4 of receipt. These objections should be titled "Objections to Magistrate Judge's Report and
5 Recommendation" and should be accompanied by points and authorities for consideration by the District
6 Court.

7 2. This Report and Recommendation is not an appealable order, and any notice of appeal
8 pursuant to Rule 4(a)(1), Fed. R. App. P., should not be filed until entry of the District Court's judgment.

9 DATED: August 18, 2010.

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12 UNITED STATES MAGISTRATE JUDGE
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